

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH 1/
BUREAU OF HEALTH SYSTEM REGULATION
DIVISION OF MEDICAL QUALITY ASSURANCE

Mr. Gregory Fortin, H.A.D.
License No. 000307
21 Millstone Drive
Marlborough, Connecticut 06477

Petition No. 941027-37-018

PROPOSED FINAL DECISION

PROCEDURAL BACKGROUND:

On March 22, 1995, the Commissioner of Public Health appointed this Hearing Officer to hear this case, and to recommend findings of fact, conclusions of law, and a proposed order upon the conclusion of the hearing. (Hearing Officer Exhibit 1).

The Department of Public Health ("Department") issued a Statement of Charges against Gregory Fortin, Hearing Aid Dealer ("Respondent"), dated March 17, 1995. (Department Exhibit 1). The Statement of Charges alleged in eleven (11) counts that the Respondent violated §20-404 of the Connecticut General Statutes and/or §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies.

The Department served the Notice of Hearing and Statement of Charges on the Respondent by certified mail, return receipt requested. (Department Exhibit 1). Respondent acknowledged receipt of the Notice of Hearing, indicated his intent not to attend, and stated that he understood that the hearing may result in the revocation of his hearing aid dealer's license. (Transcript pp. 3-4).

1/ Effective July 1, 1995, the Department of Public Health and Addiction Services became the Department of Public Health. 1995 Conn. Pub. Acts No. 95-257.

The Department brought a Motion for Summary Suspension against the Respondent. (Department Exhibit 1). On March 23, 1995, the Commissioner of Public Health granted the Department's Motion for Summary Suspension and issued an order summarily suspending hearing aid dealer license 000307 of Gregory Fortin to practice the occupation of hearing aid dealer in the State of Connecticut pending a final determination by the Commissioner of the allegations contained in the Statement of Charges. (Department Exhibit 1). The Commissioner further ordered that Gregory Fortin immediately surrender his hearing aid dealer license number 000307 to the Commissioner of Public Health. (Department Exhibit 1).

The Respondent did not file an Answer to the Statement of Charges, nor did he answer the charges orally at the hearing. (Transcript pp. 3-4).

The administrative hearing was held as scheduled on April 5, 1995, in accordance with Chapter 54 of the Connecticut General Statutes and §19a-2a-1, et. seq., of the Regulations of Connecticut State Agencies (Public Health Code).

The Respondent did not appear at the hearing nor did a representative appear on his behalf. Attorney David Pavis represented the Department. At the hearing, the Department presented evidence and conducted the direct examination of witnesses.

This proposed Final Decision is based entirely on the record and sets forth this Hearing Officer's recommended findings of fact, conclusions of law, and proposed order.

ALLEGATIONS

The Department alleged that the Respondent is and was the holder of Connecticut hearing aid dealer's license number 000307 at all times referenced in the Statement of Charges.

With Regard to the First Count

The Department further alleged that:

1. On or about March 2, 1994, Respondent or his agent, Dana Fortin ("Agent"), fit and/or sold two (2) hearing aids to Isadore Cygan, and that in providing such services the Respondent violated the standard of care in the following manner:

- a. the hearing aids did not fit properly in Mr. Cygan's ear;
- b. the hearing aids did not appropriately aid or compensate for Mr. Cygan's impaired hearing; and/or
- c. Respondent failed to refund the purchase price as required by statute and/or agreement; and

2. Respondent's actions resulted in a violation of §20-404(a)(4) and/or §20-404(a)(11) of Connecticut General Statutes, and 20-402a of the Connecticut General

Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies.

With Regard to the Second Count

The Department further alleged that:

1. On or about February 2, 1994, Respondent or Agent fit and/or sold two (2) hearing aids to Andrew Hetzel, and that in providing such services the Respondent violated the standard of care in the following manner:

- a. the hearing aids did not fit properly in Mr. Hetzel's ear;
- b. the hearing aids did not appropriately aid or compensate for Mr. Hetzel's impaired hearing; and/or
- c. Respondent failed to refund the purchase price as required by statute and/or agreement; and

2. Respondent's actions resulted in a violation of §20-404(a)(4) and/or §20-404(a)(11) of Connecticut General Statutes and §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies.

With Regard to the Third Count

The Department further alleged that:

1. On or about January 7, 1993, Respondent or Agent fit and/or sold two (2) hearing aids to Helene Wilder, and that in providing such services the Respondent violated the standard of care in the following manner:

- a. the hearing aids did not fit properly in Ms. Wilder's ear;
- b. the hearing aids did not appropriately aid or compensate for Ms. Wilder's impaired hearing; and/or
- c. Respondent failed to repair and/or return Ms. Wilder's right hearing aid; and

2. Respondent's actions resulted in a violation of §20-404(a)(3)(C) and/or §20-404(a)(4) of Connecticut General Statutes.

With Regard to the Fourth Count

The Department further alleged that:

1. On or about May 16, 1994, Respondent or Agent fit and/or sold two (2) hearing aids to Helene Wilder to replace the pair referenced in the Third Count, and that in providing such services the Respondent violated the standard of care in the following manner:

- a. the hearing aids did not fit properly in Ms. Wilder's ear;
- b. the hearing aids did not appropriately aid or compensate for Ms. Wilder's impaired hearing; and/or
- c. Respondent failed to refund the purchase price as required by statute and/or agreement; and

2. Respondent's actions resulted in a violation of §20-404(a)(4) and/or §20-404(a)(11) of Connecticut General Statutes and §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies.

With Regard to the Fifth Count

The Department further alleged that:

1. On or about December 8, 1993, Respondent or Agent fit and/or sold two (2) hearing aids to Harriet Nagy, and that in providing such services the Respondent violated the standard of care in the following manner:

- a. the hearing aids did not fit properly in Ms. Nagy's ear;
- b. the hearing aids did not appropriately aid or compensate for Ms. Nagy's impaired hearing; and/or
- c. Respondent failed to refund the purchase price as required by statute and/or agreement; and

2. Respondent's actions resulted in a violation of §20-404(a)(4) and/or §20-404(a)(11) of Connecticut General Statutes and §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies.

With Regard to the Sixth Count

The Department further alleged that:

1. On or about February 7, 1994, Respondent or Agent fit and/or sold two (2) hearing aids to Mary Ley, and on or about June 14, 1994, Respondent or Agent fit and/or sold two (2) replacement hearing aids to Mary Ley, and that in providing such services the Respondent violated the standard of care in the following manner:

- a. the hearing aids did not fit properly in Ms. Ley's ear;
- b. the hearing aids did not appropriately aid or compensate for Ms. Ley's impaired hearing; and/or
- c. Respondent failed to give Ms. Ley a \$500 rebate as required by agreement; and

2. Respondent's actions resulted in a violation of §20-404(a)(3)(A) and/or §20-404(a)(11) of Connecticut General Statutes and §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies.

With Regard to the Seventh Count

The Department further alleged that:

1. On or about May 31, 1994, Respondent or Agent fit and/or sold two (2) hearing aids to Louise Parish, and that in providing such services the Respondent violated the standard of care by failing to deliver Ms. Parish the hearing aids; and

2. Respondent's actions resulted in a violation of §20-404(a)(3)(A) and/or §20-404(a)(3)(C) of the Connecticut General Statutes.

With Regard to the Eighth Count

The Department further alleged that:

1. On or about May 10, 1994, Respondent or Agent fit and/or sold one (1) hearing aid to Elizabeth W. Carlson, and

that in providing such services the Respondent violated the standard of care in the following manner:

a. the hearing aid did not fit properly in Ms. Carlson's ear;

b. the hearing aid did not appropriately aid or compensate for Ms. Carlson's impaired hearing; and/or

c. Respondent failed to refund the purchase price as required by statute and/or agreement; and

2. Respondent's actions resulted in a violation of §20-404(a)(4) and/or §20-404(a)(11) of Connecticut General Statutes and §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies.

With Regard to the Ninth Count

The Department further alleged that:

1. On or about April 9, 1993, Respondent or Agent fit and/or sold two (2) hearing aids to Mary Anderson, and that in providing such services the Respondent violated the standard of care in the following manner:

a. the hearing aids did not fit properly in Ms. Anderson's ear; and/or

b. the hearing aids did not appropriately aid or compensate for Ms. Anderson's impaired hearing; and

2. Respondent's actions resulted in a violation of §20-404(a)(4) of Connecticut General Statutes.

With Regard to the Tenth Count

The Department further alleged that:

1. On or about December 31, 1993, Respondent or Agent fit and/or sold one (1) hearing aid to Maynard Sheltry, and that in providing such services the Respondent violated the standard of care in the following manner:

- a. the hearing aid did not fit properly in Mr. Sheltry's ear;
- b. the hearing aid did not appropriately aid or compensate for Mr. Sheltry's impaired hearing; and/or
- c. Respondent failed to refund the purchase price as required by statute and/or agreement; and

2. Respondent's actions resulted in a violation of §20-404(a)(4) and/or §20-404(a)(11) of Connecticut General Statutes and §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies.

With Regard to the Eleventh Count

The Department further alleged that:

1. On or about August 24, 1992, the Department issued Agent a temporary permit as a hearing aid dealer which permit was valid for one year; and

2. on or after August 24, 1993, Respondent employed Agent in the practice of fitting and/or selling hearing aids, as alleged in Counts One through Ten above.

3. Respondent knowingly directly or indirectly employed an unlicensed person to engage in one or more of the following activities requiring a hearing aid dealer license or permit:

- a. make adaptations of hearing aids;
- b. make impressions for earmolds;
- c. measure human hearing;
- d. make selections of hearing aids; and/or
- e. sell hearing aids;

4. such employment of an unlicensed person to perform the activities listed above resulted in a violation of §20-404(a)(3)(B).

FINDINGS OF FACT

1. The Respondent is, and was at all times referenced in the Statement of Charges, the holder of Connecticut hearing aid dealer's license number 000307. (Department Exhibit 1(B)).

2. The Respondent and Agent practiced under the business name of Hearing Health Care Group in three different locations: 26 Shunpike Road, Cromwell, CT, 06416; 38 Whiting Street, New Britain, CT, 06051; 11 South Main Street, Marlborough, CT, 06447. (Department Exhibit 1(A)).

With Regard to the First Count

3. On or about March 2, 1994, Agent performed a hearing test on Isadore Cygan, recommended Mr. Cygan purchase two (2) hearing aids and fit him for two Nu-Ear hearing aids ("the

Cycan Aids"). (Transcript pp. 8-9).

4. On or about March 4, 1994, Mr. Cycan tendered a check to Agent in the amount of \$600.00 as a deposit toward the purchase price of the Cycan Aids. (Department Exhibit 1(E)).

5. On or about March 25, 1994, Mr. Cycan received the Cycan Aids from Agent and tendered a second check in the amount of \$590.00, representing the second installment payment toward the purchase price on the Cycan Aids. (Transcript p. 9; Department Exhibit 1(E)).

6. Within two hours of receiving the Cycan Aids, the left aid fell out of Mr. Cycan's ear because it did not fit properly. (Transcript p. 9; Department Exhibit 1(E)).

7. Between March 25, 1994, and mid-July, 1994, Mr. Cycan returned the Cycan Aids to Respondent for adjustments because they did not fit correctly and/or were not functioning properly. (Transcript pp. 9-11; Department Exhibit 1(E)).

8. Respondent repeatedly extended Mr. Cycan's thirty-day trial period on the Cycan Aids due to Mr. Cycan's chronic complaints concerning the fit and ineffectiveness of the Cycan Aids. (Transcript pp. 13-14; Department Exhibit 1(E)).

9. On or about July 14, 1994, Mr. Cycan telephoned Respondent and informed him that he planned to return the Cycan

Aids for a refund. (Transcript p. 11). Respondent visited Mr. Cygan's home, took possession of the Cygan Aids, and signed an agreement stating that he would refund Mr. Cygan \$1190.00 within sixty (60) days. (Transcript p. 11; Department Exhibit 1(E)).

10. Respondent failed to refund Mr. Cygan the \$1190.00 purchase price he paid for the Cygan Aids. (Transcript p. 14).

With Regard to the Second Count

11. On or about February 2, 1994, Andrew J. Hetzel signed a purchase agreement with Respondent agreeing to purchase two (2) Nu-Ear hearing aids (the "Hetzel Aids") for the total purchase price of \$3500.00. (Department Exhibit 1(F)).

12. On or about February 10, 1994, Mr. Hetzel tendered a check in the amount of \$1500.00 to Respondent as a down payment on the Hetzel Aids. (Department Exhibit 1(F)).

13. On or about March 1, 1994, Mr. Hetzel received the Hetzel Aids. (Department Exhibit 1(F)).

14. During the period of March 1, 1994 through March 29, 1994, Mr. Hetzel returned to Respondent's office several times for adjustments to the Hetzel Aids because they were not performing satisfactorily. (Department Exhibit 1(F)).

15. On or about March 29, 1994, Mr. Hetzel returned the Hetzel Aids to the Agent for a refund. (Department Exhibit 1(F)). Agent signed to acknowledge receipt of the Hetzel Aids and stated that Mr. Hetzel's \$1500.00 down payment toward the purchase price would be refunded in approximately thirty (30) days. (Department Exhibit 1(F)).

16. On or about June 23, 1994, Mr. Hetzel received a check from Respondent in the amount of \$750.00. (Department Exhibit 1(F)). Respondent told Mr. Hetzel that he would receive the balance of his deposit on Friday, July 1, 1994. (Department Exhibit 1(F)).

17. Mr. Hetzel returned to Respondent's office on July 1, 1994 to find the office closed and the door locked. (Department Exhibit 1(F)).

18. Respondent failed to return \$750.00 balance of the \$1500.00 deposit Mr. Hetzel tendered him toward the purchase price of the Hetzel Aids. (Department Exhibit 1(F)).

With Regard to the Third Count

19. In January of 1993, Helene M. Wilder accepted an offer from Respondent for a free home hearing evaluation, and the Respondent and Agent visited Ms. Wilder's home to perform the evaluation. (Transcript p. 16; Department Exhibit 1(G)).

20. Ms. Wilder had been wearing a hearing aid in one (1) ear

since 1986, but Ms. Wilder agreed to purchase two (2) new hearing aids (the "Starkey Secret Aids") from Respondent at his recommendation. (the "Starkey Secret Aids"). (Transcript p. 18; Department Exhibit 1(G)).

21. Ms. Wilder tendered two (2) checks to Respondent or Agent totalling \$2,200.00 representing the purchase price for the Starkey Secret Aids. (Transcript p. 19; Department Exhibit 1(G)).

22. Ms. Wilder began experiencing problems with the fit and effectiveness of the Starkey Secret Aids immediately. (Transcript p. 19; Department Exhibit 1(G)). As a result of these problems, the Starkey Secret Aids were returned to Respondent for adjustments in February, May and December of 1993. (Transcript p. 19; Department Exhibit 1(G)). On each of these occasions Respondent held the Starkey Secret Aids in his possession for approximately two (2) months. (Transcript p. 19; Department Exhibit 1(G)).

23. In early May 1994, Ms. Wilder's right Starkey Secret Aid began to malfunction again, and she contacted the Respondent and requested he pick it up for repair. (Transcript p. 20; Department Exhibit 1(G)). The Respondent took possession of the right Starkey Secret Aid on May 13, 1994. (Transcript pp. 20-21; Department Exhibit 1(G)).

24. Respondent failed to return Ms. Wilder's right Starkey Secret Aid. (Transcript pp. 24; Department Exhibit 1(G)).

With Regard to the Fourth Count

25. In May of 1994, Respondent or Agent suggested that a different type hearing aid known as the Nu-Ear may more effectively compensate Ms. Wilder's hearing impairment than the Starkey Secret Aids he sold her in January of 1993. (Transcript pp. 20-21; Department Exhibit 1(G)).

26. On May 16, 1994, Ms. Wilder went to the Respondent's office, was fitted for two Nu-Ear Aids (the "Nu-Ear Aids"), and on May 18, 1994, Ms. Wilder tendered a third check to Agent in the amount of \$1500.00 representing a down payment on the purchase price of the Nu-Ear Aids. (Transcript pp. 20-21; Department Exhibit 1(G)).

27. Respondent did not deliver the Nu-Ear Aids to Ms. Wilder until July 22, 1994, and within two days, Ms. Wilder found the Nu-Ear Aids intolerable and unsatisfactory, and Respondent came to her house on July 25, 1994 to make adjustments. (Transcript pp. 22-23, 28-29; Department Exhibit 1(G)).

28. Ms. Wilder was not satisfied with the adjustments and returned the Nu-Ear Aids to Respondent who promised to return to her home on July 29, 1994 with her \$1500.00 refund for the Nu-Ear Aids. (Transcript pp. 23, 28-29; Department Exhibit 1(G)).

29. Respondent failed to refund Ms. Wilder the \$1500.00 she paid toward the purchase price of the Nu-Ear aids.

With Regard to the Fifth Count

30. On or about December 8, 1993, Respondent or Agent visited the home of Harriet Nagy to perform a free hearing evaluation. (Transcript pp. 32-33).

31. Based on the test results, Respondent or Agent recommended that Ms. Nagy purchase two (2) hearing aids, but Ms. Nagy decided to purchase only one (1) aid (the "Nagy Aid") from Respondent. (Transcript p. 33).

32. The Nagy Aid was delivered to Ms. Nagy on January 15, 1994, and Ms. Nagy tendered a check to Respondent or Agent in the amount of 950.00. (Department Exhibit 1(G)). Ms. Nagy paid Respondent or Agent a total of \$1000.00 for the Nagy Aid (Transcript p. 35).

33. Ms. Nagy experienced problems with the fit and effectiveness of the Nagy Aid almost immediately and returned to Respondent's office on several occasions for adjustments. (Transcript p. 23).

34. The adjustments to the Nagy Aid did not improve the fit or effectiveness of the Nagy Aid, and Ms. Nagy returned the Nagy Aid to Respondent who agreed to refund Ms. Nagy the purchase price. (Transcript p. 34).

35. After a long delay, Respondent tendered a refund check to Ms. Nagy in the amount of \$500.00 and promised that the \$500.00 balance would be forthcoming.

36. Respondent failed to refund the \$500.00 balance of the purchase price for the Nagy Aid to Ms. Nagy. (Transcript pp. 37, 40).

With Regard to the Sixth Count

37. On or about February 7, 1994, Mary Ley visited Respondent's office at 26 Shunpike Road, Cromwell, CT for a hearing evaluation. (Transcript p. 42; Department Exhibit 1(I)).

38. Respondent or Agent informed Ms. Ley that she was eighty-five (85%) percent deaf and told her that her present hearing aid (the "Original Aid") was of no value. (Transcript p.42; Department Exhibit 1(I)).

39. Respondent or Agent recommended that Ms. Ley purchase two (2) Nu-Ear hearing aids (the "Nu Aids"). (Transcript p. 42).

40. Nu-Ear hearing aids are not appropriate for an individual who is eighty-five (85%) percent deaf, and Respondent should not have fit Ms. Ley for Nu-Ear Aids. (Transcript p. 59).

41. Ms. Ley tendered Respondent \$2500.00 as a deposit toward the total \$3500.00 purchase price of the Nu Aids. (Transcript p. 67).

42. Ms. Ley returned to Respondent's office on six (6) occasions because the Nu Aids did not fit properly, and Respondent or Agent caused Ms. Ley physical pain in an attempt to get the Nu Aids to fit properly. (Transcript pp. 47, 50).

43. Respondent or Agent broke Ms. Ley's Original Aid while it was in his possession, leaving Ms. Ley without any hearing aid during the period he was fitting and refitting Ms. Ley for the Nu Aids. (Transcript p. 45).

44. After the sixth attempt to fit Ms. Ley for the Nu Aids failed, the Respondent suggested that they fit Ms. Ley for a different type of hearing aid (the "Miracle Aids"). (Transcript p. 50).

45. Although the Miracle Aids were very similar to Ms. Ley's Original Aid which Respondent informed her was "junk", Ms. Ley agreed to be fit for the Miracle Aids. (Transcript pp. 50-51; Department Exhibit 1(I)).

46. The total purchase price of the Miracle Aids was \$2200.00, and Respondent signed a statement agreeing to rebate Ms. Ley \$500.00 of the \$2500.00 she paid as a downpayment on the Nu Aids. (Department Exhibit 1(I); Department Exhibit 1(I)).

47. Respondent failed to tender Ms. Ley the \$500.00 rebate. (Department Exhibit 1(I)).

With Respect to the Seventh Count

48. On or about May 31, 1994, Louise D. Parish signed an agreement to purchase two (2) hearing aids (the "Parish Aids") from the Respondent or Agent and tendered a check in the amount of \$1400.00 representing the entire purchase price. (Department Exhibit 1(K)).

49. Respondent or Agent negotiated the check on June 1, 1994. (Department Exhibit 1(J)).

50. Respondent failed to deliver the Parish Aids to Ms. Parish. (Department Exhibit 1(J)).

With Respect to the Eighth Count

51. On or about May 10, 1994, Elizabeth W. Carlson agreed to purchase one (1) Nu-Ear hearing aid (the "Carlson Aid") from the Respondent and tendered a check in the amount of \$900.00 to Agent as a down payment toward the total purchase price of the Carlson Aid. (Department Exhibit 1(K)).

52. Respondent or Agent delivered the Carlson Aid to Ms. Carlson on June 17, 1994, and Ms. Carlson tendered Respondent a second check in the amount of \$600.00 representing the balance

of the total purchase price of the Carlson Aid. (Department Exhibit 1(K)).

53. Ms. Carlson was not satisfied with the Carlson aid and returned it to Respondent on July 7, 1994 for a full refund of the purchase price. (Department Exhibit 1(K)). Respondent told Ms. Carlson the refund would be forthcoming within sixty (60) days. (Department Exhibit 1(K)).

54. Respondent failed to refund the \$1500.00 purchase price for the Carlson Aid to Ms. Carlson. (Department Exhibit 1(K)).

With Regard to the Ninth Count

55. On or about April 9, 1993, Mary Anderson purchased two (2) hearing aids (the "Anderson Aids") from Respondent or Agent. (Department Exhibit 1(L)).

56. Ms. Anderson tendered \$1000.00 to Respondent or Agent as a down payment toward the total purchase price of \$2190.00. (Department Exhibit 1(L)).

57. The Anderson Aids did not fit properly in Ms. Anderson's ears, and she returned to the Respondent's office on several occasions to have them adjusted. (Department Exhibit 1(L)).

58. The fit of the Anderson Aids continued to be a problem for Ms. Anderson, but because Respondent closed his office, Ms. Anderson was unable to contact Respondent prior to the

expiration of her thirty (30) day trial period. (Department Exhibit 1(L)).

With Regard to the Tenth Count

59. On or about December 31, 1993, Maynard Sheltry purchased two (2) hearing aids (the "Sheltry Aids") from the Respondent and tendered a check to Respondent in the amount of \$1000.00 representing a down payment toward the purchase price of the Sheltry Aids. (Department Exhibit 1(M)).

60. On January 12, 1994, Mr. Sheltry tendered Respondent a second check in the amount of \$1000.00 representing the balance of the purchase price for the Sheltry Aids. (Department Exhibit 1(M)).

61. Mr. Sheltry returned the Sheltry Aids to Respondent several times for adjustments, and on June 16, 1994, Mr. Sheltry returned the Sheltry Aids to Respondent for a full refund. (Department Exhibit 1(M)).

62. Respondent failed to deliver Mr. Sheltry's refund within the sixty (60) days as promised. (Department Exhibit 1(M)).

63. Respondent failed to return Mr. Sheltry's \$2000.00 refund representing the full purchase price of the Sheltry Aids.

With Regard to the Eleventh Count

64. On or about August 24, 1992, the Department issued Agent a temporary permit as a hearing aid dealer valid from August 24, 1992 through August 24, 1993. (Department Exhibit 1(C)).

65. On or about March 16, 1994, Agent applied to the Department to have his temporary permit renewed but failed to submit the paper work required. (Department Exhibit 1(C)).

66. Agent does not presently hold a temporary permit as a hearing aid dealer (Department Exhibit 1(C)).

67. Respondent employed Agent after his temporary license expired on August 24, 1993 to do one or more of the following:

- a. make adaptations of hearing aids;
- b. make impressions for earmolds;
- c. measure human hearing;
- d. make selections of hearing aids; and/or
- e. sell hearing aids.

(Transcript p. 8; Department Exhibit 1(F); Transcript p. 16; Department Exhibit 1(G); Transcript pp. 44-45; Department Exhibit 1(I); Department Exhibit 1(J); Department Exhibit 1(K); Department Exhibit 1(L)).

DISCUSSION AND CONCLUSIONS OF LAW

Connecticut General Statutes §20-404 provides in pertinent part:

The department may suspend or revoke the license of a hearing aid dealer, after notice and hearing ...or may reprimand or take any of the actions set forth in section 19a-17, for any of the following causes:

- (3) Unethical conduct, including: (A) The obtaining of any fee or the making of any sale by fraud or misrepresentation; (B) knowingly employing directly or indirectly any unlicensed person or any person whose license has been suspended to perform any work covered by this chapter; (C) engaging in fraud or material deception in the course of professional activities;
- (4) Incompetence or negligence in fitting or selling hearing aids;
- (11) Violating any provision of this chapter or the regulations promulgated thereunder;....

Connecticut General Statutes §20-402a provides in pertinent part:

No hearing aid shall be sold to any purchaser unless accompanied in writing by a thirty-day trial period providing that if such purchaser returns the hearing aid in the same condition as when purchased,..., within thirty days of the date of receipt..., such purchaser

shall be entitled to free adjustment of such hearing aid or the return of the full purchase price ..., whichever the purchaser desires;...

Section 20-406-15 of the Regulations of Connecticut State Agencies provides in pertinent part:

Any purchaser of a hearing aid entitled to a refund pursuant to Connecticut General Statutes, subsection (a) of section 20-402a, shall be given such refund within sixty (60) days of his request.

The Department bears the burden of proof by a preponderance of the evidence in this matter.

The First Count

With regard to Paragraphs 3 and 4 of the First Count of the Statement of Charges, the Department sustained its burden of proof that the Respondent, or Agent was incompetent or negligent in fitting and/or selling hearing aids in violation of Connecticut General Statute §20-404(a)(4) in that the hearing aids fitted by Respondent or Agent, and sold to Mr. Cychan, did not fit properly and did not compensate for Mr. Cychan's impaired hearing even following several adjustments by the Respondent.

The Department sustained its burden of proof that the Respondent violated §20-404(a)(11) of the Connecticut General Statutes and §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies because Mr. Cygan returned the Cygan Aids to Respondent within the period allotted by statute and/or agreement, and Respondent failed to refund Mr. Cygan the full purchase price.

The Second Count

With regard to Paragraphs 7 and 8 of the Second Count of the Statement of Charges, the Department sustained its burden of proof that the Respondent or Agent was incompetent or negligent in fitting and/or selling hearing aids in violation of Connecticut General Statute §20-404(a)(4) in that the hearing aids fitted by the Respondent or Agent, and sold to Mr. Hetzel, did not fit properly and did not compensate for Mr. Hetzel's impaired hearing even following several adjustments by the Respondent.

The Department sustained its burden of proof that the Respondent violated §20-404(a)(11) of the Connecticut General Statutes and §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies because Mr. Hetzel

returned the Hetzel Aids to Respondent within the period allotted by statute and/or agreement, and Respondent failed to refund Mr. Hetzel the full purchase price.

The Third Count

With regard to Paragraphs 12 and 13 of the Third Count of the Statement of Charges, the Department sustained its burden of proof that the Respondent or Agent was incompetent or negligent in fitting and/or selling hearing aids in violation of Connecticut General Statute §20-404(a)(4) in that the hearing aids fitted by the Respondent or Agent, and sold to Ms. Wilder, did not fit properly and did not compensate for Ms. Wilder's impaired hearing even following several adjustments by the Respondent.

The Department sustained its burden of proof that the Respondent violated Connecticut General Statute §20-404(a)(3)(C) in that the Respondent or Agent made material misrepresentations to Ms. Wilder concerning his intention to repair and return her right Starkey Secret Aid and, in fact, failed to return such aid to Ms. Wilder.

The Fourth Count

With regard to Paragraphs 16 and 17 of the Fourth Count of the Statement of Charges, the Department sustained its burden of proof that the Respondent or Agent was incompetent or negligent

in fitting and/or selling hearing aids in violation of Connecticut General Statute §20-404(a)(4) in that the hearing aids fitted by the Respondent or Agent, and sold to Ms. Wilder, did not fit properly and did not compensate for Ms. Wilder's impaired hearing.

The Department sustained its burden of proof that the Respondent violated §20-404(a)(11) of the Connecticut General Statutes and §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies because Ms. Wilder returned the Nu-Ear Aids to Respondent within the period allotted by statute and/or agreement, and Respondent failed to refund Ms. Wilder the full purchase price.

The Fifth Count

With regard to Paragraphs 20 and 21 of the Fifth Count of the Statement of Charges, the Department sustained its burden of proof that the Respondent or Agent was incompetent or negligent in fitting and/or selling hearing aids in violation of Connecticut General Statute §20-404(a)(4) in that the hearing aids fitted by the Respondent or Agent, and sold to Ms. Nagy, did not fit properly and did not compensate for Ms. Nagy's impaired hearing even following several adjustments by the Respondent.

The Department sustained its burden of proof that the Respondent violated §20-404(a)(11) of the Connecticut General Statutes and §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies because Ms. Nagy returned the Nagy Aid to Respondent within the period allotted by statute and/or agreement, and Respondent failed to refund Ms. Nagy the full purchase price.

The Sixth Count

With regard to Paragraph 23 of the Sixth Count of the Statement of Charges, the Department sustained its burden of proof that the Respondent or Agent was incompetent or negligent in fitting and/or selling hearing aids in violation of Connecticut General Statute §20-404(a)(4) in that the hearing aids fitted by the Respondent or Agent, and sold to Ms. Ley, did not fit properly and did not compensate for Ms. Ley's impaired hearing even following several adjustments by the Respondent.

With regard to Paragraphs 25 and 26 of the Sixth Count of the Statement of Charges, the Department sustained its burden of proof that the Respondent violated the standard of care by failing to give Ms. Ley a \$500.00 rebate as required by agreement in violation of §20-404(a)(3)(A) of the Connecticut General Statutes.

The Seventh Count

With regard to Paragraphs 29 and 30 of the Seventh Count of the Statement of Charges, the Department sustained its burden of proof that the Respondent or Agent made a sale by fraud and engaged in material deception in the course of professional activities in violation of §20-404(3)(A) and §20-404(a)(3)(C) of the Connecticut General Statutes in that Respondent or Agent negotiated the check Ms. Parish tendered him as a deposit toward the purchase price of the Parish Aids but failed to deliver the Parish Aids to Ms. Parish.

The Eighth Count

With regard to Paragraphs 33 and 34 of the Eighth Count of the Statement of Charges, the Department sustained its burden of proof that the Respondent or Agent was incompetent or negligent in fitting and/or selling hearing aids in violation of Connecticut General Statute §20-404(a)(4) in that the hearing aid fitted by the Respondent or Agent, and sold to Ms. Carlson, did not fit properly and did not compensate for Ms. Carlson's impaired hearing even following several adjustments by the Respondent.

The Department sustained its burden of proof that the Respondent violated §20-404(a)(11) of the Connecticut General Statutes and §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut

State Agencies because Ms. Carlson returned the Carlson Aid to Respondent within the period allotted by statute and/or agreement, and Respondent failed to refund Ms. Carlson the full purchase price.

The Ninth Count

With regard to Paragraphs 37 and 38 of the Ninth Count of the Statement of Charges, the Department sustained its burden of proof that the Respondent or Agent was incompetent or negligent in fitting and/or selling hearing aids in violation of §20-404(a)(4) of the Connecticut General Statutes in that the hearing aids fitted by the Respondent or Agent, and sold to Ms. Anderson, did not fit properly and did not compensate for Ms. Anderson's impaired hearing even following several adjustments by the Respondent.

The Tenth Count

With regard to Paragraphs 41 and 42 of the Tenth Count of the Statement of Charges, the Department sustained its burden of proof that the Respondent or Agent was incompetent or negligent in fitting and/or selling hearing aids in violation of Connecticut General Statute §20-404(a)(4) in that the hearing aids fitted by the Respondent or Agent, and sold to Mr. Sheltry, did not fit properly and did not compensate for Mr. Sheltry's impaired hearing even following several adjustments by the Respondent.

The Department sustained its burden of proof that the Respondent violated §20-404(a)(11) of the Connecticut General Statutes and §20-402a of the Connecticut General Statutes taken in conjunction with §20-406-15 of the Regulations of Connecticut State Agencies because Mr. Sheltry returned the Sheltry Aids to Respondent within the period allotted by statute and/or agreement, and Respondent failed to refund Mr. Sheltry the full purchase price.

The Eleventh Count

With regard to the Eleventh Count of the Statement of Charges, the Department sustained its burden of proof that Respondent employed Agent in the practice of fitting and/or selling hearing aids on and after August 24, 1993 in violation of §20-404(a)(3)(B) of the Connecticut General Statutes prohibiting the employment of an unlicensed person from engaging in one or more of the following activities:

- a. making adaptations of hearing aids;
- b. making impressions for earmolds;
- c. measuring human hearing;
- d. making selections of hearing aids; and/or
- e. selling hearing aids.

ORDER

Based on the record in this case, the above findings of fact and conclusions of law, I respectfully recommend the following to the Commissioner with regard to each Count:

1. The hearing aid dealer's license number 000307 of Gregory Fortin to practice the occupation of hearing aid dealer in the State of Connecticut be revoked; and
2. The Respondent be fined \$500.00 pursuant to §20-407 of the Connecticut General Statutes for a total fine of \$5,500.00. Respondent must pay the \$5,500.00 fine by certified check, made payable to: "Treasurer, State of Connecticut" and mailed to Bonnie Pinkerton, Nurse Consultant, Department of Public Health, Division of Medical Quality Assurance, 150 Washington Street, Hartford, CT 06106. The certified check shall include the Department petition number on its face for identification purposes.

Respectfully submitted,

D. Shapiro

Daniel Shapiro, Hearing Officer
Department of Public Health

11/28/95

Date

DS
1512Q/10-41
11/95

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH

CERTIFIED MAIL Z 015 245 761

IN RE: Department of Public Health v. Gregory Fortin

PETITION # 941027-37-018

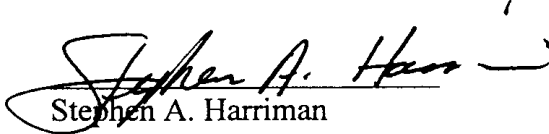
Gregory Fortin
21 Millstone Drive
Marlborough, CT 06477

Roberta A. Swafford, Staff Attorney
Department of Public Health
150 Washington Street
Hartford, CT 06106

FINAL DECISION

The undersigned Commissioner of Department of Public Health having received no request to file exceptions to the hearing officer's proposed final decision or to present briefs and oral arguments regarding the above-captioned matter, hereby adopts as the final decision the proposed final decision (attached) rendered by Hearing Officer Daniel Shapiro on November 28, 1995.

Dated at Hartford, Connecticut, this 20 day of Dec, 1995.


Stephen A. Harriman
Commissioner
Department of Public Health

Enclosure: Proposed Decision

cc: Richard J. Lynch, Assistant Attorney General

Daniel Shapiro, Esq.

Warren Wollschlager, Jr., Bureau Chief

Mark Brennan, Director, Office of Special Services

Stanley K. Peck, Director, DMQA

Donna Buntaine Brewer, Chief, PHHO

Kathie Pirolo, Board Liaison

Bonnie Pinkerton, Nurse Consultant, PHHO

